

Application No.: 10/796,609
Filing Date: March 9, 2004

REMARKS

In response to the Office Action mailed March 14, 2008, the Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following remarks.

In Re Rejection of Previously Allowed Claims

As an initial matter, Applicants note that the present application has been pending approximately 4 years. In that time, the present Application had been prosecuted to the point where many of the claims were indicated to be allowable and the remainder of the claims was believed to be allowable based on a telephonic interview with the previous Examiner. For example, in Office Actions dated June 14, 2006, February 2, 2007, April 16, 2007, and July 27, 2007, the majority of the then-pending claims were indicated to be allowed. However, since the present Application was subsequently docketed to a new Examiner, it has appeared to Applicants as if prosecution has begun anew, culminating in the present Office Action that rejects all of the previously allowed claims, as well as those claims believed to be allowable in light of the Examiner interview.

Applicants respectfully note that the M.P.E.P., the Commissioner of Patents, and the federal courts have all taken a dim view of such a recommencing of prosecution by a second Examiner. For example, the M.P.E.P. states: “Full faith and credit should be given to the search and action of a previous Examiner unless there is a clear error in the previous action or knowledge of other prior art. In general, an Examiner should not take an entirely new approach or attempt to reorient the point of view of a previous Examiner, or make a new search in the mere hope of finding something.” M.P.E.P. § 706.04. The M.P.E.P. further states that “it is unusual to reject a previously allowed claim,” and urges “great care” be exercised in making such a rejection. M.P.E.P. § 706.04.

In this instance, the Examiner has relied primarily on Kosuge in the substantive rejections of the claims. Applicants note that Kosuge and Izumi were cited by the previous Examiner in the first substantive Office Action mailed in this application, dated June 14, 2006. Nevertheless, the majority of the claims were immediately and repeatedly allowed by the previous Examiner despite the Kosuge and Izumi references. Regardless, in the present Office Action, the Examiner

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has used the Kosuge and Izumi references to reject these previously-allowed claims, as well as the claims that were believed to be allowable based on the telephonic interview. The Examiner has not cited newly-discovered art, nor has the Examiner asserted there has been a clear error in the actions of the previous Examiner.

Accordingly, Applicants respectfully request that the Examiner reconsider the substantive treatment of previously allowed claims and accord “full faith and credit” to the actions of the previous Examiner. Applicants thus request that the Examiner withdraw all substantive rejections for at least the reasons that the previous Examiner found the claims to distinguish over the Kosuge and Izumi references. In the alternative, should the Examiner conclude that “clear error” was present in the actions of the previous Examiner, Applicants respectfully submit a response to the Office Action on the pages that follow.

Summary of the Office Action

In the March 14, 2008 Office Action, Claims 1, 5-19, and 21-26 stand rejected. Claims 10-13 and 15 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regards as the invention. Claims 9-19 and 21-24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,798,400 issued to Kosuge (hereinafter “Kosuge”). Claims 9-12, 15, 21 and 24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,269,899 issued to Izumi (hereinafter “Izumi”). Claims 1, 5-8, 25 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kosuge. In addition, Claim 20 stands objected to as being dependent upon a rejected base claim, however, the Examiner notes that it would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Summary of the Amendment

Upon entry of this amendment, Applicants will have amended Claims 6, 7, and 9-10, and added new Claims 27-28. Accordingly, Claims 1 and 5-28 are currently pending. By this amendment, the Applicants respond to the Examiner’s comments and rejections made in the March 14, 2008 Office Action. Please note that in the amendments to the claims, deletions are

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indicated by strikethrough (e.g. ~~deletion~~) or double brackets (e.g. [[word]]) and additions to the claims are underlined (e.g. addition). Applicants respectfully submit that the present application is in condition for allowance.

In Re Rejection under 35 U.S.C. § 112

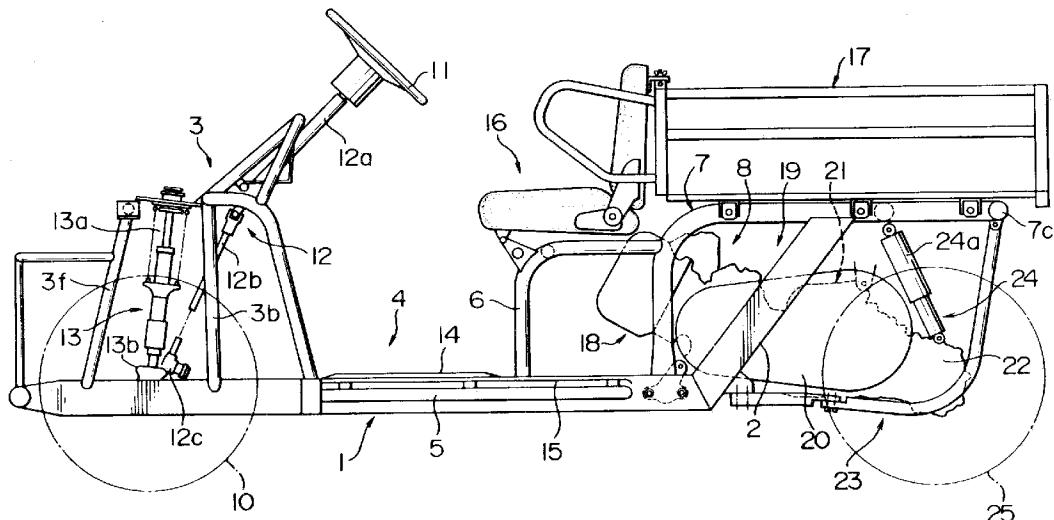
In the Office Action, Claims 10-13 and 15 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regards as the invention. Applicants have amended Claim 10 in order to clearly recite that “one of the rear section of the first group or the front section of the second group extends farther from a longitudinal axis of the frame extending fore to aft than the other one of the rear section of the first group or the front section of the second group,” thus clarifying the claimed subject matter. Accordingly, Applicants respectfully request that the rejection of Claims 10-13 and 15 be withdrawn.

Kosuge Does Not Anticipate Claims 9-19 and 21-24

Claims 9-19 and 21-24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kosuge. While Applicants reserve the right to prosecute these claims as originally filed, Applicants have amended Claim 9 in order to expedite prosecution of this Application. Accordingly, Applicants respectfully request that the rejection of Claim 9, as well as Claims 10-19 and 21-24 be withdrawn and that these claims be indicated as allowable.

Kosuge discloses a vehicle frame that includes a main frame 1, an oblique frame 2, a seat fitting frame 6, and a propulsion apparatus support frame 7 comprising a pair of L-shaped pipes 7a. Kosuge, col. 2, line 31 – col. 3, line 40. Further, as shown in Figure 3 below, Kosuge also discloses a load container 17 that can be supported on the propulsion apparatus support frame 7. *See id.* at col. 3, lines 55-58. However, Kosuge is devoid of any disclosure relating to the location or orientation of the exhaust system of the vehicle.

FIG. 3



In contrast, Claim 9 recites, *inter alia*, an off-road vehicle comprising an exhaust system wherein “at least a portion of the exhaust system . . . [is] positioned between the frame members of the second group.” As noted above, Kosuge is devoid of any disclosure relating to such a feature as recited in Claim 9.

Accordingly, because Kosuge fails to disclose each and every feature recited in Claim 9, Applicants respectfully request that the Examiner withdraw a rejection of Claim 9, as well as Claims 10-19 and 21-24 and indicate that these claims are allowable over the art of record.

Izumi Does Not Anticipate Claims 9-12, 15, 21, and 24

Claims 9-12, 15, 21, and 24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Izumi. As noted above, while Applicants reserve the right to prosecute these claims as originally filed, Applicants have amended Claim 9 in order to expedite prosecution of this Application. Accordingly, Applicants respectfully request that the rejection of Claim 9, as well as Claims 10-12, 15, 21, and 24 be withdrawn and that these claims be indicated as allowable.

Izumi is directed to a transmission arrangement for an off-road vehicle. *See* Izumi, Abstract. In addition, Izumi discloses that the off-road vehicle can have a tubular, open type frame 22 including upper tubes 24, lower tubes 26, and seat rails 34. *See id.* at col. 2, lines 27-59, and Figures 1 and 2. However, as illustrated in Figure 2, the exhaust system disclosed in Izumi clearly discloses that the exhaust pipe 140 and the muffler 142 are not disposed

intermediate the upper tubes 24 and are also not disposed intermediate the seat rails 34. *See* Figure 2.

In contrast, Claim 9 recites, *inter alia*, an off-road vehicle comprising an exhaust system wherein “at least a portion of the exhaust system . . . [is] positioned between the frame members of the second group.” Izumi fails to disclose such a feature as recited in Claim 9.

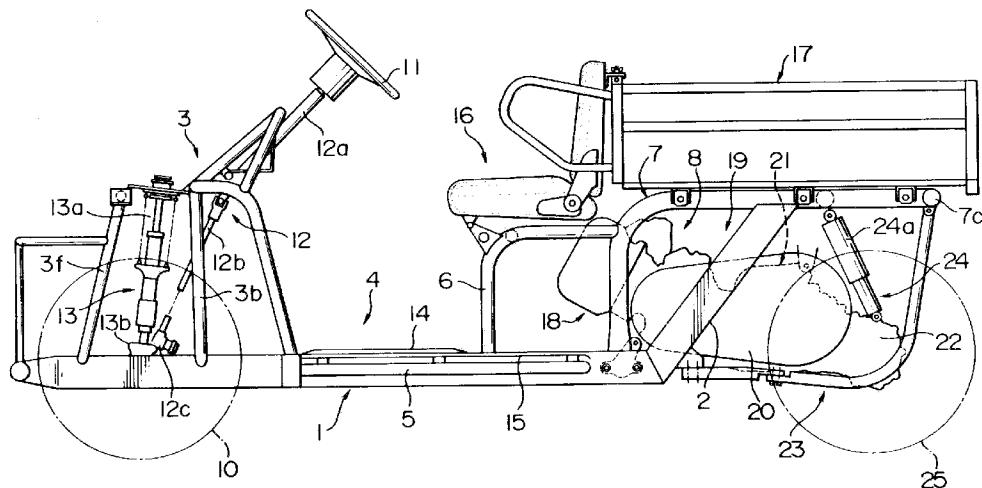
Accordingly, because Izumi fails to disclose each and every feature recited in Claim 9, Applicants respectfully request that the Examiner withdraw her rejection of Claim 9, as well as Claims 10-12, 15, 21, and 24 and indicate that these claims are allowable over the art of record.

Kosuge Does Not Render Obvious Claims 1, 5-8, 25, and 26

Claims 1, 5-8, 25, and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kosuge. As discussed in greater detail below, Applicants respectfully submit that Kosuge is improperly characterized and improperly applied in the Office Action. Therefore, Applicants respectfully request that the rejection of Claim 1, as well as Claims 5-8, 25, and 26 be withdrawn and that these claims be indicated as allowable over the art of record.

As noted above, Kosuge discloses a vehicle frame that includes a main frame 1, an oblique frame 2, a seat fitting frame 6, and a propulsion apparatus support frame 7 comprising a pair of L-shaped pipes 7a. Kosuge, col. 2, line 31 – col. 3, line 40. Further, as shown in Figure 3 below, Kosuge also discloses a load container 17 that can be supported on the propulsion apparatus support frame 7. *See id.* at col. 3, lines 55-58.

FIG. 3



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The Office Action indicates that Kosuge teaches a frame with “a plurality of frame portions including at least first, second and third frame portions that extend adjacent to the prime mover, the first and second frame (7, 7a, and 2) being disposed generally to the lateral sides of the prime mover with the third frame portion (7b) extending generally between the first and second frame portions.” Office Action, page 5.

However, the Office Action also indicates that “[r]egarding the detachably affixed frame portion extending adjacent to an upper portion of the prime mover, it is the Examiner’s position that the member 17 can, broadly and reasonably be considered a frame portion, and it extends in the claimed location.” *Id.* (emphasis added). Based on this interpretation, the Office Action thus indicates that it would be obvious to select amongst various detachable connectors such that the “load container 17” can be detachably connected to the Kosuge frame. Applicants respectfully submit this rejection of Claim 1 is the result of an improper characterization and improper application of Kosuge.

Initially, it is noted that Kosuge is devoid of any disclosure supporting the Office Action’s position that the “member 17” can be considered a “frame portion.” Instead, the teachings of Kosuge clearly distinguish between the frame, frame portions, or members and the load container 17, thus contradicting the Office Action’s position. Kosuge expressly indicates that the “member 17” is not a frame member at all, but instead is merely “a load container.” *See* Kosuge, col. 3, lines 55-58 (“A seat 16 can be supported on the seat frame 6, and a load container 17, extending rearwards from the seat 16 can be supported on the propulsion apparatus support frame 7.” (emphasis added)).

This disclosure in Kosuge is made only after each of the components of the frame has already been discussed and is made in the context of other components such as an engine and a transmission, which clearly do not form part of a vehicle frame. *See id.* at col. 3, line 41 – col.4, line 5. Accordingly, Kosuge clearly indicates that the load container 17 is an optional component and does not form part of the vehicle frame.

Additionally, Kosuge indicates that the frame is shown in Figures 1 and 2, but these figures do not show the load container 17. *See id.* at col. 2, lines 19-27 (emphasis added); col. 2, lines 31-35. Although Figures 3 illustrates the load container 17 being supported on the propulsion apparatus support frame 7, Kosuge states that Figure 3 illustrates the vehicle frame

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“fitted with various parts and apparatuses of a buggy.” See *id.* at col. 2, lines 19-27 (emphasis added); col. 2, lines 31-35. As such, Kosuge differentiates between the frame and other vehicle components in the drawings. Kosuge illustrates the vehicle frame by itself and also illustrates the vehicle frame fitted with optional components. Again, the load container 17 is merely an optional component that does not form part of the frame.

Therefore, given the permissive language with which Kosuge describes the load container 17 (that the load container 17 “*can be* supported on the propulsion apparatus support frame 7” (*Id.* at col. 3, lines 55-58)), Kosuge’s reference to Figures 1 and 2 as illustrating the vehicle frame (which figures do not show the load container 17), and Kosuge’s reference to Figure 3 as illustrating the vehicle frame “fitted with various parts and apparatuses of a buggy,” it is clear that the load container 17 is not a critical or essential component of the Kosuge vehicle frame.

Secondly, Applicants submit that although the present Application clearly, consistently, and carefully distinguishes between the terms “frame” or “member” (as referring to the frame) and “carrier or cargo box” (as referring to a cargo box/load container), the Office Action’s interpretation of Claim 1 is not consistent with the terminology set forth in the Application. Referring to the present Application, Paragraph [0041] indicates that:

With reference to the figures 1 2, off-road vehicle 30 preferably has a carrier or car all box 92 behind this unit 66. He illustrated carrier 92 extends over a rear portion of the rear frame 38 and is simply affixed at least to the rear frame members 46. In one arrangement, the carrier 92 can be tapped rearward Lee to allow its contents to be comes out. The carrier 92 preferably is formed generally in the shape of a rectangular parallelepiped and has a bottom, a front, a rear and a pair of lateral sides. That is, the carrier 92 is generally configured as an open topped box.

In contrast however, the present Application also indicates that the “frame 32 comprises a mainframe 34, a front frame 36, a rear frame 38 and a compartment frame (or pillar frame) 40.” See Applicants’ Application, Paragraph [0028]. Continuing, Paragraphs [0029]-[0032] clearly discuss the components of the frame 32 in terms of frames and members. Subsequently, the present Application also describes non-frame components such as the floorboard, the wheels, the seat unit, the steering mechanism, and finally, the carrier or cargo box 92, the tie rods, the suspension, the food or bonnet, the prime mover, and other such additional components. See Applicants’ Application, Paragraphs [0033]-[0086]. Finally, the present Application discusses additional details regarding the frame of the vehicle. See Applicants’ Application, Paragraphs

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[0087]-[0149]. It is in this final group of paragraphs in the present Application that the “detachably affixed frame portion” of Claim 1 is discussed.

For example, Paragraph [0113] indicates that “A reinforcement member 300 preferably extends between the seat pedestal members 297.” Paragraph [0114] further discloses that an “advantage is provided where the reinforcement member of 300 is detachably affixed to the inward lateral sides of the seat pedestal members 297.” In this regard,

the reinforcement member 300 [can] extend[] adjacent to the engine unit 148. As such, the reinforcement member 300 provides additional strength to the frame 32 and aids in protecting the engine unit 148, yet allows a mechanic or repair person to remove the reinforcement member 300 to access the portion of the engine unit 148 for maintenance or repairs.

See id. at Paragraph [0114]; *see also id.* at Paragraphs [0115]-[0118].

Therefore, Applicants respectfully submit that the present Application clearly, consistently, and unambiguously distinguishes between the terms “frame” or “member” and “carrier or cargo box.” As such, Applicants respectfully request that the Examiner interpret Claim 1 consistently with the present Application. Applicants believe that such an interpretation invariably leads to the conclusion that the “detachably affixed frame portion” is not a “carrier or cargo box.” This interpretation similarly coincides with a proper understanding and interpretation of Kosuge, which Applicants believe renders Claim 1 patentable over Kosuge.

As a result, Claim 1 defines over Kosuge by reciting, *inter alia*, “a detachably affixed frame portion that is detachably coupled to at least one of the first, second and third frame portions such that the detachably affixed frame portion can be detached from the frame while at least the first, second and third frame portions remain supported by the at least one front wheel, the detachably affixed frame portion extending adjacent to an upper portion of the prime mover.”

This distinction is important because, as noted above, the detachably affixed frame portion is not the carrier, cargo box, or load container that can be attached to the frame of the vehicle. Instead, the detachably affixed frame portion provides unique advantages, including frame reinforcement and ease of access for engine repair. Nothing in Kosuge teaches or suggests such a detachably affixed frame portion, in combination with the other recitation of Claim 1.

Thus, Applicants submit that Claim 1 clearly and non-obviously defines over Kosuge. Accordingly, Applicants respectfully request that the rejection of Claims 1, 5-8, 25, and 26 be withdrawn and that these claims be indicated as allowable over the art of record.

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New Claims 27-28 Define over the Cited Art

Applicants hereby submit to Claims 27-28 for consideration. Applicants respectfully submit that these new claims should be allowable for at least the reason that they depend from an allowable independent base claim, Claim 1. However, these claims are also allowable on their own merit. For example, the prior art does not disclose or otherwise teach an off-road vehicle having a detachably affixed frame portion “wherein the frame does not support a load container,” as recited in Claim 27. Further, the prior art does not disclose or otherwise teach an off-road vehicle having a detachably affixed frame portion and “a load container being detachably coupled to at least one of the first, second and third frame portions,” as recited at Claim 28. Therefore, Applicants respectfully request that the Examiner indicate that the Claims 27-28 are allowable.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

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Patents and Co-Pending Applications of Assignee

Applicants wish to draw the Examiner's attention to the following patents co-pending applications of the present application's assignee.

Serial Number	Title	Filed	Atty Docket No.
7,147,075	ENGINE ARRANGEMENT FOR OFF-ROAD VEHICLE	March 2, 2004	FY.51034US1A
7,147,076	DRIVE SYSTEM FOR OFF-ROAD VEHICLE	March 2, 2004	FY.51035US1A
7,287,619	AIR INTAKE SYSTEM FOR OFF-ROAD VEHICLE	March 2, 2004	FY.51036US1A
7,367,417	FLOOR ARRANGEMENT FOR OFF-ROAD VEHICLE	March 2, 2004	FY.51037US1A
7,357,211	STEERING SYSTEM FOR OFF-ROAD VEHICLE	March 5, 2004	FY.51038US1A
10/791,164	OFF ROAD VEHICLE WITH AIR INTAKE SYSTEM	March 2, 2004	FY.51039US1A
11/775,772	OFF ROAD VEHICLE WITH AIR INTAKE SYSTEM	July 10, 2007	FY.51039US2C1
10/796,692	OFF-ROAD VEHICLE WITH WHEEL SUSPENSION	March 9, 2004	FY.51040US1A
10/803,274	TRANSMISSION FOR OFF-ROAD VEHICLE	March 18, 2004	FY.51043US1A
11/775,442	TRANSMISSION FOR OFF-ROAD VEHICLE	July 10, 2007	FY.51043US2C1

CONCLUSION

Applicants respectfully submit that the above rejections and objections have been overcome and that the present application is now in condition for allowance. Therefore, the Applicants respectfully request that the Examiner indicate that Claims 1 and 5-28 are now acceptable and allowed. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Applicants respectfully submit that the claims are in condition for allowance in view of the above remarks. Any remarks in support of patentability of one claim, however, should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on that

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portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Applicants also have not presented arguments concerning whether the applied references can be properly combined in view of, among other things, the clearly missing elements noted above, and Applicants reserve the right to later contest whether a proper reason exists to combine these references and to submit indicia of the non-obviousness of the claimed management system.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claim and drawings in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call the Applicants' attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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